

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Randall Kowalke,

Plaintiff,

v.

David Eastman et al,

Defendant.

Case No. 3AN-22-07404CI

ORDER GRANTING MOTION TO CHANGE VENUE

Representative David Eastman has filed a motion to change the venue for trial in this case to Palmer. He argues that holding the trial in Palmer will be more convenient for the witnesses and promote the ends of justice. The Division of Elections has not opposed the request. Randall Kowalke opposes changing venue. The court finds that holding trial in this case in Palmer will meet the interests of justice and also be equally convenient for the witnesses. The court therefore grants the motion.

I. Legal Standard and Analysis

State law requires that venue for all actions must be set under rules adopted by the supreme court.¹ Alaska Rule of Civil Procedure 3 specifies where cases may be filed. Under Civil Rule 3(b), venue for civil actions is proper in the judicial district in which the defendant can be personally served or in which

¹ AS 22.10.030.

the claim arose.² Representative Eastman resides within the third judicial district.³ Both the Anchorage and Palmer courts are within the third district. Venue was therefore initially proper in Anchorage.

Because this case was properly filed in Anchorage, the decision on whether to change the place of trial is governed by AS 22.10.040. Under that statute, the court may change the place of trial for any of the following reasons:

- (1) when there is reason to believe that an impartial trial cannot be had;
- (2) when the convenience of witnesses and the ends of justice would be promoted by the change;
- (3) when for any cause the judge is disqualified from acting, but if the judge of another judicial district is assigned to try the action, no change of place of trial need be made; or
- (4) if the court finds that the defendant will be put to unnecessary expense and inconvenience, and if the court finds that the expense and inconvenience were intentionally caused, the court may assess costs against the plaintiff.⁴

Representative Eastman argues that a change is warranted under subparts (2) and (4).⁵

² Civil Rule 3(b) reads, "All actions in ejectment, for recovery of possession, for quieting title, for partition, or for the enforcement of liens upon real property shall be commenced in the superior court in the judicial district in which the real property, or any part of it affected by the action, is situated. Such actions may also be commenced in the venue district in which the real property is located if the superior court in the district accepts such cases for filing."

³ The area encompassing the third judicial district is defined in AS 22.10.010. A court may take judicial notice of whether particular places are within a district. See *McGee v. State*, 614 P.2d 800, 808 (Alaska 1980) (The supreme court took judicial notice of the fact that Mile 206 of the Richardson Highway was within the fourth judicial district).

⁴ AS 22.10.040.

⁵ Because the court grants this request under subpart (2) it will not address subpart (4).

The Alaska supreme court has emphasized that in a motion to change venue under AS 22.10.040(2), "the moving party bears the burden of proving not only that the convenience of the witnesses will be promoted but also that the ends of justice will be promoted by the change since the two conditions are stated conjunctively."⁶ The court will therefore examine both in turn.

a. Changing venue to Palmer would be equally convenient for in-person witnesses.

The focus for the court's inquiry for the first prong is on whether the location is convenient for the witnesses rather than on the convenience of the parties.⁷ Here, the parties preliminary witness lists reveal that the majority of the witnesses reside outside of Alaska. The parties anticipate that most out-of-state witnesses will testify remotely by Zoom. Of the in-state witnesses, three reside in the Matanuska-Susitna Borough, one resides in Anchorage, and another in Juneau. It is not unusual for witnesses in Anchorage-tried cases to be located in the Mat-Su Valley, and courts have in the past declined to transfer cases on this rationale.⁸ On the other hand, Palmer would be equally convenient for an Anchorage-based witness. Given that one non-party witness resides in the

⁶ *Coughlan v. Coughlan*, 423 P.2d 1010, 1015 (Alaska 1967).

⁷ *Id.* at 1015 ("In the absence of unusual circumstances the convenience of the parties is not to be considered in weighing the merits of a motion for change of place of trial.").

⁸ See the unpublished opinion in *Turner v. Turner*, not reported in P.3d, 2009 WL 415586, at *5 (Feb. 18, 2009) ("The trial court also noted that "it's [not] all that unusual for Wasilla witnesses to participate in Anchorage proceedings." Any additional expense or inconvenience to Danita was relatively insignificant, and Danita failed to show that the expense and inconvenience were "unnecessary" to resolve this dispute. The court acted within its discretion in denying Danita's motion for change of venue.").

Valley and one non-party witness resides in Anchorage, this factor is neutral on whether to change venue; both venues are equally convenient.

b. Changing venue would promote the interests of justice.

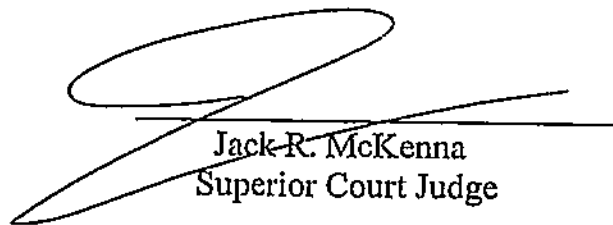
The second prong of AS 22.10.040(2) requires the court to consider the interests of justice. Representative Eastman argues that this suit has the most direct impact on the voters in his district. The court agrees. While all Alaskans have an interest in ensuring that elected representatives meet the qualification standards required by the Alaska Constitution, the voters in House District 27 have an additional and distinct direct interest in whether their representative is qualified to hold public office. Indeed, the court's decision to order the Division to delay certifying the results of the House District 27 election until after trial in this case was premised on the recognition that this case directly impacts those voters' ability to choose their elected representative. Holding the trial in Palmer will allow for more people who reside in House District 27 to attend the trial in person if they wish to do so. The court therefore finds that the interests of justice weigh strongly in favor of transferring venue for this case to Palmer.

II. Conclusion

As explained above, the court finds that hearing this case in Palmer will advance the interests of justice and be equally convenient for the non-party witnesses who will testify at trial. The court therefore GRANTS the motion to change venue, and trial in this case will be held at the Palmer courthouse. A scheduling order assigning a courtroom for trial will be issued at a future date.

Undersigned will remain the assigned judge for this case. Although trial will be held in Palmer, future pretrial and scheduling hearings will still be held in Anchorage as previously calendared.

DONE this 15th day of November, 2022, at Anchorage, Alaska.



Jack R. McKenna
Superior Court Judge

I certify that on 11/15/2022
a copy of the above was mailed to
each of the following at their
addresses of record:

G Ouldukgian, S Fletcher,
J Davis, T Flynn, L Harrison,
C. Ferntheil J Miller
Judicial Assistant